

1 MATTHEW J. McKEOWN  
2 Acting Assistant Attorney General  
3 Environment and Natural Resources Division  
4 U.S. Department Of Justice  
5 ROBERT D. MULLANEY (Cal. Bar No. 116441)  
6 Trial Attorney  
7 Environmental Enforcement Section  
8 U.S. Department of Justice  
9 301 Howard Street, Suite 1050  
10 San Francisco, CA 94105  
11 Tel: (415) 744-6491  
12 Fax: (415) 744-6476  
13 E-mail: Robert.Mullaney@usdoj.gov

8 GEORGE S. CARDONA  
9 Acting United States Attorney  
10 Central District of California  
11 Federal Building, Suite 7516  
12 300 North Los Angeles Street  
13 Los Angeles, CA 90012  
14 Tel: (213) 894-2400  
15 Fax: (213) 894-0141

13 Attorneys for Plaintiff United States of America

14 [Attorneys for Plaintiff California DTSC on next page]

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17 WESTERN DIVISION

18 UNITED STATES OF AMERICA  
19 and CALIFORNIA DEPARTMENT  
20 OF TOXIC SUBSTANCES  
21 CONTROL,  
22 Plaintiffs,

21 v.

22 AZUSA PIPE AND TUBE  
23 BENDING CORP., FREDERICK G.  
24 TRESSEL, RONALD F. TRESSEL,  
25 and FREDERICK G. TRESSEL and  
26 VIOLET M. TRESSEL,  
27 TRUSTEES of the TRESSEL  
28 FAMILY TRUST,

Defendants.

Case No. CV 06-165 CAS (RZx)

FIRST AMENDED COMPLAINT  
FOR COST RECOVERY AND  
INJUNCTIVE RELIEF

1 EDWARD G. BROWN JR.  
Attorney General of the State of California

2 THEODORA BERGER  
Senior Assistant Attorney General

3 DONALD A. ROBINSON  
Deputy Attorney General

4 ANN RUSHTON (Cal. Bar No. 62597)  
Deputy Attorney General

5 California Department of Justice  
300 South Spring Street

6 Los Angeles, California 90013

7 Tel: (213) 897-2608

8 Fax: (213) 897-2802

E-mail: Ann.Rushton@doj.ca.gov

9 Attorneys for Plaintiff California

Department of Toxic Substances Control

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 The United States of America, by and through the undersigned attorneys, by  
2 the authority of the Attorney General of the United States and at the request of and  
3 on behalf of the United States Environmental Protection Agency ("EPA"), and the  
4 California Department of Toxic Substances Control ("DTSC") allege the  
5 following:

6 STATEMENT OF THE CASE

7 1. This is a civil action brought pursuant to Sections 106 and 107 of the  
8 Comprehensive Environmental Response, Compensation, and Liability Act, as  
9 amended ("CERCLA"), 42 U.S.C. §§ 9606, 9607, against Azusa Pipe and Tube  
10 Bending Corp. ("Azusa Pipe"), Frederick G. Tressel, Ronald F. Tressel, and  
11 Frederick G. Tressel and Violet M. Tressel, in their representative capacity as  
12 Trustees of the Tressel Family Trust (jointly "Defendants"). Pursuant to CERCLA  
13 Section 107, 42 U.S.C. § 9607, the United States and DTSC seek recovery of  
14 unreimbursed costs incurred and to be incurred by them, together with interest, for  
15 activities undertaken in response to the release or threatened release of hazardous  
16 substances at the Baldwin Park Operable Unit of the San Gabriel Valley  
17 Superfund Sites, Areas 1-4, in Los Angeles County, California (the "BPOU Area"  
18 or "Site"). The United States and DTSC also seek a declaratory judgment,  
19 pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), that Defendants  
20 are jointly and severally liable for future response costs incurred by the United  
21 States and DTSC in connection with the Site. Pursuant to CERCLA Section 106,  
22 42 U.S.C. § 9606, the United States seeks performance of studies and response  
23 work by Defendants at the BPOU Area consistent with the National Contingency  
24 Plan, 40 C.F.R. Part 300 (as amended). In addition, the complaint seeks injunctive  
25 relief pursuant to Section 7003 of the Solid Waste Disposal Act, as amended by  
26 the Resource Conservation and Recovery Act of 1976 and the Hazardous and  
27 Solid Waste Amendments of 1984 (collectively, "RCRA"), 42 U.S.C. § 6973.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 6973(a), 9606, 9607, and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) and (c) because the claims arose, and the threatened or actual releases of hazardous substances occurred, in this district, and because Defendants reside in this district.

## DEFENDANTS

4. Azusa Pipe is California corporation and a “person,” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

5. Azusa Pipe is a person who, at the time of disposal of a hazardous substance, operated a facility at 766 N. Todd Avenue in Azusa, California (the “N. Todd Avenue property”) from which there was a release, or a threatened release, of a hazardous substance that caused the incurrence of response costs.

6. Frederick G. Tressel is a "person," as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), who, at the time of disposal of a hazardous substance, owned or operated the N. Todd Avenue property from which there was a release, or a threatened release, of a hazardous substance that caused the incurrence of response costs. Frederick G. Tressel, in his representative capacity as Trustee of the Tressel Family Trust, is an owner with an undivided one-half interest in and to the N. Todd Avenue property.

7. Ronald F. Tressel is a “person,” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), who, at the time of disposal of a hazardous substance, owned or operated the N. Todd Avenue property from which there was a release, or a

1 threatened release, of a hazardous substance that caused the incurrence of response  
2 costs. Ronald F. Tressel is an owner with an undivided one-half interest in and to  
3 the N. Todd Avenue property.

4 8. Violet M. Tressel is a "person," as defined by Section 101(21) of  
5 CERCLA, 42 U.S.C. § 9601(21), and Section 1004(15) of RCRA, 42 U.S.C.  
6 § 6903(15), who, in her representative capacity as Trustee of the Tressel Family  
7 Trust, is an owner with an undivided one-half interest in and to the N. Todd  
8 Avenue property.

#### 9 GENERAL ALLEGATIONS

10 9. The BPOU Area is located in the San Gabriel Valley in and near the  
11 cities of Azusa, Irwindale, Baldwin Park, and West Covina in Los Angeles  
12 County, California. The BPOU Area comprises a several mile long area of  
13 groundwater contamination in the San Gabriel Valley. The BPOU Area is a  
14 "facility" within the meaning and scope of Section 101(9) of CERCLA, 42 U.S.C.  
15 § 9601(9).

16 10. In October 1984, EPA placed the BPOU Area on the National  
17 Priorities List based on water quality information available at the time of listing.  
18 40 C.F.R. Part 300, Appendix B. The BPOU Area is known as the San Gabriel  
19 Valley Area 2 Superfund Site.

20 11. Subsequent investigation by EPA and others revealed the tremendous  
21 extent of groundwater contamination in the San Gabriel Valley. During the past  
22 25 years, more than one-quarter of the approximately 190 municipal water supply  
23 wells in the San Gabriel Valley have been found to be contaminated, requiring  
24 water companies to shut down wells, install new treatment facilities, and take  
25 other steps to ensure that they can supply water meeting federal and State drinking  
26 water standards.

27 12. From approximately October 1984 to April 1993, EPA undertook a  
28 Remedial Investigation and Feasibility Study ("RI/FS") for the BPOU Area,

1 pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. Part 300. In a  
2 report dated April 2, 1993, EPA presented the results of the BPOU Area RI/FS.

3 13. EPA's decision on the interim remedial action for the BPOU Area is  
4 embodied in an interim Record of Decision ("ROD"), executed on March 31,  
5 1994. The ROD is supplemented by an Explanation of Significant Differences  
6 ("ESD") issued in May 1999. The selected interim remedy provides for the  
7 construction and operation of groundwater extraction wells, treatment facilities,  
8 and conveyance facilities capable of pumping and treating approximately 22,000  
9 gallons per minute of contaminated groundwater from the BPOU Area. This  
10 remedy is intended to limit the movement of contaminated groundwater into clean  
11 or less contaminated areas and depths, remove a significant mass of contamination  
12 from the groundwater, and provide the data necessary to determine, in a  
13 subsequent final Record of Decision, "in situ" cleanup standards for the BPOU  
14 Area.

15 14. Azusa Pipe operated a facility at the N. Todd Avenue property from  
16 approximately 1953 until May 1, 2005. Azusa Pipe bent pipes and tubes for  
17 commercial and aircraft applications and used chlorinated solvents such as  
18 perchloroethylene ("PCE") and trichloroethene ("TCE") for degreasing and parts  
19 cleaning at the N. Todd Avenue property.

20 15. Azusa Pipe reported using approximately 50 to 600 gallons per year  
21 of PCE and TCE at the N. Todd Avenue property from 1966 through 1988.  
22 Solvents such as PCE and TCE were disposed of at the N. Todd Avenue property  
23 during this time period.

24 16. Ronald F. Tressel currently owns an undivided one-half interest in the  
25 N. Todd Avenue property and has owned the property since 1951. Frederick G.  
26 Tressel owned an undivided one-half interest in the N. Todd Avenue property  
27 from 1951 to 1995. In 1995, he transferred his undivided one-half interest in the  
28 N. Todd Avenue property to Frederick G. Tressel and Violet M. Tressel as

1 Trustees of the Tressel Family Trust. Frederick G. Tressel and Violet M. Tressel,  
2 in their representative capacities as Trustees, currently own an undivided one-half  
3 interest in the N. Todd Avenue property.

4 17. In subsurface investigations at the N. Todd Avenue property, PCE  
5 and TCE have been detected in soil and/or soil vapor. These investigations  
6 confirmed the presence of hazardous substances, as defined by Section 101(14) of  
7 CERCLA, 42 U.S.C. § 9601(14), and solid wastes, as defined by Section 1004(27)  
8 of RCRA, 42 U.S.C. § 6903(27), at the N. Todd Avenue property.

9 18. The N. Todd Avenue property is a "facility" within the meaning and  
10 scope of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

11 19. There was a "release" or a threat of a "release," as defined by Section  
12 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances into the  
13 environment at and from the N. Todd Avenue property.

14 20. Hazardous substances, within the meaning of Section 101(14) of  
15 CERCLA, 42 U.S.C. § 9601(14), and solid wastes, within the meaning of Section  
16 1004(27) of RCRA, 42 U.S.C. § 6903(27), have been disposed of at the N. Todd  
17 Avenue property.

18 21. Hazardous substances and solid wastes released from the N. Todd  
19 Avenue property have moved downward from the surface and through soil,  
20 contaminating groundwater beneath the N. Todd Avenue property. The  
21 contamination has generally migrated southward and westward from the N. Todd  
22 Avenue property, leaving large plumes of contaminated groundwater in the BPOU  
23 Area.

24 22. The release or threat of release of one or more hazardous substances  
25 from the N. Todd Avenue property and the BPOU Area may present an imminent  
26 and substantial endangerment to the public health or welfare or the environment  
27 under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). The substances listed in  
28 Paragraph 17 are solid wastes that may present an imminent and substantial

1 endangerment to health or the environment under Section 7003 of RCRA, 42  
2 U.S.C. § 6973.

3 23. On or about January 3, 1997, EPA notified Azusa Pipe that it  
4 considered Azusa Pipe, as an operator of a facility at the N. Todd Avenue  
5 property, to be potentially responsible for costs incurred in the investigation and  
6 clean-up of groundwater contamination in the BPOU Area.

7 24. On June 30, 2000, EPA, pursuant to Section 106(a) of CERCLA, 42  
8 U.S.C. § 9606(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, issued to  
9 nineteen potentially responsible parties ("PRPs"), including Azusa Pipe, a  
10 unilateral administrative order ("Order"), requiring each of them to perform at the  
11 BPOU Area the remedial action activities set forth in the ROD as supplemented by  
12 the ESD. The effective date of the Order was July 10, 2000.

13 25. In issuing the Order, EPA found that the release or threat of release of  
14 one or more hazardous substances and solid wastes from the Site may present an  
15 imminent and substantial endangerment to health, welfare, and the environment  
16 under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and Section 7003 of  
17 RCRA, 42 U.S.C. § 6973. EPA also found that the actions required by the Order  
18 were necessary to protect the public health, welfare, and the environment.

19 26. A group of eight PRPs are complying with EPA's Order by  
20 implementing a joint cleanup and water supply project with certain water  
21 purveyors in the San Gabriel Valley. Azusa Pipe is not performing the work  
22 required by the Order.

23 **FIRST CLAIM FOR RELIEF**  
24 **Injunctive Relief under CERCLA Section 106**

25 27. The allegations contained in Paragraphs 1 - 26 are realleged and  
26 incorporated by reference herein.

27 28. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in  
28 pertinent part:



1 [W]hen the President determines that there may be an imminent and  
2 substantial endangerment to the public health or welfare or the environment  
3 because of an actual or threatened release of a hazardous substance from a  
4 facility, he may require the Attorney General of the United States to secure  
5 such relief as may be necessary to abate such danger or threat, and the  
6 district court of the United States in the district in which the threat occurs  
7 shall have jurisdiction to grant such relief as the public interest and the  
8 equities of the case may require.

9 29. Azusa Pipe is liable as a person who, at the time of disposal of  
10 hazardous substances, operated a facility at which such hazardous substances were  
11 disposed of, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C.  
12 § 9607(a)(2).

13 30. Ronald F. Tressel and Frederick G. Tressel and Violet M. Tressel, in  
14 their representative capacities as Trustees of the Tressel Family Trust, are each  
15 liable as an owner of a facility within the meaning of Section 107(a)(1) of  
16 CERCLA, 42 U.S.C. § 9607(a)(1).

17 31. Ronald F. Tressel and Frederick G. Tressel are each liable as a person  
18 who, at the time of disposal of hazardous substances, owned or operated a facility  
19 at which such hazardous substances were disposed of, within the meaning of  
20 Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

21 32. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a),  
22 Defendants are jointly and severally liable to Plaintiff United States for injunctive  
23 relief to abate and remedy the imminent and substantial endangerment to public  
24 health or welfare or the environment presented by the BPOU Area.

25 **SECOND CLAIM FOR RELIEF**  
26 **Response Costs under CERCLA Section 107**

27 33. The allegations contained in Paragraphs 1 - 26 and 29 - 31 are  
28 realleged and incorporated by reference herein.

34. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides that the  
owner and operator of a vessel or a facility from which there is a release, or a  
threatened release, of a hazardous substance that causes the incurrence of response

1 costs shall be liable for all costs of removal or remedial action incurred by the  
2 United States Government or a State not inconsistent with the National  
3 Contingency Plan.

4 35. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides in  
5 pertinent part that, in any action for recovery of costs: “the court shall enter a  
6 declaratory judgment on liability for response costs or damages that will be  
7 binding on any subsequent action or actions to recover further response costs or  
8 damages.”

9 36. The actions taken by the United States and DTSC in connection with  
10 the Site constitute “response” actions within the meaning of Section 101(25) of  
11 CERCLA, 42 U.S.C. § 9601(25), in connection with which the United States and  
12 DTSC have incurred costs.

13 37. The costs incurred by the United States and DTSC in connection with  
14 the Site are not inconsistent with the National Contingency Plan, which was  
15 promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified  
16 at 40 C.F.R. Part 300.

17 38. As of June 30, 2004, the United States had incurred response costs in  
18 connection with the Site of approximately \$32.1 million. As of March 13, 2007,  
19 the United States has received reimbursement in the sum of approximately \$25.9  
20 million. The United States continues to incur response costs in connection with  
21 the Site.

22 39. As of March 31, 2004, DTSC had incurred response costs in  
23 connection with the Site in excess of \$3.96 million, and has received  
24 reimbursement of approximately \$224,000. DTSC continues to incur response  
25 costs in connection with the Site.

26 40. Defendants are jointly and severally liable to the United States and  
27 DTSC for all response costs incurred and to be incurred by the United States and  
28 DTSC in connection with the Site, including enforcement costs and prejudgment

1 interest on such costs, pursuant to Section 107(a) of CERCLA, 42 U.S.C.  
2 § 9607(a).

3 THIRD CLAIM FOR RELIEF  
4 Injunctive Relief under RCRA Section 7003

5 41. The allegations contained in Paragraphs 1 - 26 are realleged and  
6 incorporated by reference herein.

7 42. Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), provides in pertinent  
8 part:

9 [U]pon receipt of evidence that the past or present handling, storage,  
10 treatment, transportation or disposal of any solid waste or hazardous waste  
11 may present an imminent and substantial endangerment to health or the  
12 environment, the Administrator may bring suit . . . against any person  
13 (including any past or present generator, past or present transporter, or past  
14 or present owner or operator of a treatment, storage, or disposal facility)  
15 who has contributed or who is contributing to such handling, storage,  
16 treatment, transportation or disposal . . . to order such person to take such  
17 . . . action as may be necessary . . . .

18 43. Defendants are persons who have contributed or are contributing to  
19 the past or present handling, storage, treatment, transportation and/or disposal of  
20 solid waste at the BPOU Area.

21 44. EPA has evidence that the past or present handling, storage,  
22 treatment, transportation and/or disposal of solid waste at the BPOU Area may  
23 present an imminent and substantial endangerment to health or the environment.

24 45. Notice of this suit has been provided to the State of California in  
25 accordance with Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

26 46. Pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a),  
27 Defendants are jointly and severally liable to Plaintiff United States for injunctive  
28 relief to abate and remedy the imminent and substantial endangerment to health or  
the environment presented by the BPOU Area.

26 PRAYER FOR RELIEF

27 WHEREFORE, Plaintiffs, the United States and DTSC, pray that this Court:

28 1. Order the Defendants, jointly and severally, to take all measures

1 necessary to abate and remedy the imminent and substantial endangerment to  
2 public health or welfare or the environment presented by the BPOU Area;

3 2. Enter judgment in favor of the United States and DTSC and against  
4 Defendants, jointly and severally, for all costs, including prejudgment interest,  
5 incurred by the United States and DTSC for response actions in connection with  
6 the Site and not otherwise reimbursed;

7 3. Enter a declaratory judgment on liability for response costs or  
8 damages that will be binding on any subsequent action or actions to recover  
9 further response costs or damages;

10 4. Award the United States and DTSC their costs of this action; and

11 5. Grant such other and further relief as this Court deems to be just and  
12 proper.

13 Respectfully submitted,

14 FOR THE UNITED STATES OF AMERICA

15  
16  
17 Date: 4/5/02

18 Matthew J. McKeown  
19 Acting Assistant Attorney General  
20 Environment and Natural Resources  
21 Division  
22 Washington, D.C. 20530

23  
24  
25  
26  
27  
28 Date: \_\_\_\_\_

Robert D. Mullaney  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
301 Howard Street, Suite 1050  
San Francisco, California 94105  
Tel: (415) 744-6491  
Fax: (415) 744-6476

1 OF COUNSEL:  
2 Janet Magnuson  
3 Assistant Regional Counsel  
4 U.S. EPA, Region 9  
5 75 Hawthorne Street  
6 San Francisco, California 94105  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 FOR THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES  
2 CONTROL

3 Edward G. Brown Jr.  
4 Attorney General of the State of California

5 Date: \_\_\_\_\_

6 Ann Rushton  
7 Deputy Attorney General  
8 California Department of Justice  
9 300 South Spring Street  
10 Los Angeles, CA 90013  
11 Tel: (213) 897-2608  
12 Fax: (213) 897-2802  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28